

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

March 17, 2000

NEWENERGY EAST, L.L.C.
Application for License to Operate
as a Competitive Electricity Provider
(Application to Amend License)

Docket No. 2000-153

ORDER AMENDING LICENSE

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we amend the license of NewEnergy East, L.L.C. to operate as a competitive electricity provider in Maine pursuant to Chapter 305 of the Commission's Rules.

II. APPLICATION

On December 13, 1999, in Docket No. 1999-809, we issued an Order Granting License to NewEnergy East, L.L.C. (NewEnergy) to operate in Maine as a competitive electricity provider, as provided in Chapter 305. That license authorized NewEnergy to offer retail service only to customers with a demand greater than 100 kilowatts in Maine. On February 24, 2000, NewEnergy applied to the Commission to amend its license.

A. Type of Service Proposed

NewEnergy proposes to expand its authority to enable it "to serve all retail consumer classes."

III. FINANCIAL ISSUES

A. Security

Section 2(B)(1)(a)(i) of Chapter 305 states that "a license will not be issued or remain in force until the applicant or licensee furnishes a surety bond or letter of credit" meeting requirements of that rule. The initial security level is set by section 2(B)(1)(a)(ii) as \$100,000.

NewEnergy has furnished a surety bond in the amount of \$100,000 as its security instrument, with supporting materials as required by section 2(B)(1)(a)(iv) of

Chapter 305. We have reviewed that instrument and find that it conforms to the requirements of Chapter 305.¹

B. Showing of Professional and Financial Capability

We find that the security instrument provided by NewEnergy as described above demonstrates that NewEnergy has financial capability to engage in its proposed business as a competitive electricity provider in Maine.

IV. TECHNICAL ISSUES

A. Showing of Technical Capability

NewEnergy, as a competitive electricity provider in Maine, must demonstrate it has the technical ability to enter necessary interconnection arrangements or contracts with Maine utilities, pursuant to section 2(B)(2)(a) of Chapter 305. In its initial application for a license in Docket No. 1999-809, NewEnergy provided information demonstrating its ability to enter into such arrangements or contracts, although it stated it had not yet reached such agreements. Accordingly, our Order Granting License in that proceeding directed that NewEnergy not act to enroll customers or provide generation service until all required contracts have been executed consistent with Commission rules. This Order Amending License retains that directive. NewEnergy shall notify the Commission when all such contracts have been executed.

Section 2(B)(2)(b) of Chapter 305 requires an applicant to demonstrate that it has the technical ability to secure generation or otherwise obtain and deliver electricity meeting all applicable requirements for the bulk power system control area in which the applicant would provide service. Our Order Granting License in Docket No. 1999-809 granted NewEnergy's request to offer service throughout all areas of Maine pursuant to Chapter 305.

B. Resource Portfolio

¹ We note that the bond provided by NewEnergy contains a provision that "In no event shall the bond amount (penalty) be cumulative from year to year, or exceed the amount so stated above [\$100,000.00]." Chapter 305, in §§ 2(B)(1)(a)(ii-iii), sets an "initial security level" of \$100,000, and provides that the Commission will adjust the required security amount annually based on retail sales to small customers in Maine. In the event that an annual readjustment pursuant to Chapter 305 raises the security level for NewEnergy above \$100,000, we will require NewEnergy to provide a replacement security instrument meeting the new amount.

NewEnergy, as a competitive electricity provider in Maine, pursuant to section 2(B)(4) of Chapter 305, must demonstrate its ability to meet the resource portfolio requirement of 35-A M.R.S.A. § 3210 and the portfolio requirement reporting rules in Chapter 311 of the Commission's rules. In its initial license application in Docket No. 1999-809, NewEnergy filed information to demonstrate its ability to meet these requirements in compliance with Chapter 305.

V. CONSUMER PROTECTION ISSUES

A. Showing of Fitness

In its initial license application in Docket No. 1999-809, NewEnergy provided information required by Chapter 305 section 2(B)(3) related to enforcement proceedings and customer complaints in compliance with requirements of Chapter 305.

B. Ability to Comply with Consumer Protection Rules

With its application for an amended license, NewEnergy provided information demonstrating its ability to comply with the applicable consumer protection requirements of Chapter 305 and other consumer protection requirements pursuant to 35-A M.R.S.A. Chapter 32 and other relevant provisions of Maine law. We have reviewed that information and find that it meets the requirements of Chapter 305.

C. Do-Not-Call List

Chapter 305 section 4(I) states that "[t]he Commission will maintain or cause to be maintained a 'Do-Not-Call' list of customers who have requested -- orally, in writing, or by commercially accepted electronic means -- that they not receive telemarketing calls from competitive electricity providers." We require that licensees use do-not-call list mechanisms already in place nationally to satisfy that requirement. To the extent that it telemarkets to Maine consumers, NewEnergy shall comply with the following requirements.

NewEnergy must comply with the requirements of the Telephone Consumer Protection Act,² the Telemarketing and Consumer Fraud and Abuse Prevention Act,³ and related rules of the Federal Communications Commission⁴ and Federal Trade Commission.⁵ NewEnergy must comply with those requirements and must maintain its own do-not-call list as required by those laws and rules, for all

²47 U.S.C. § 227

³15 U.S.C. §§ 6101-6108

⁴47 CFR 64.1200

⁵FTC Telemarketing Sales Rule, 16 CFR Part 310

intrastate and interstate telemarketing of Maine consumers, including both residential and business customers. NewEnergy shall not telemarket to Maine customers on that list, as required in Chapter 305 section 4(I)(1). NewEnergy shall update its do-not-call list at least monthly, and maintain copies of that list for at least six months. NewEnergy shall provide a copy of that list to the Commission upon request.

Further, each month, NewEnergy must obtain listings of Maine consumers who have arranged to be included on the do-not-call list maintained by the Telephone Preference Service of the Direct Marketing Association, Inc.⁶ NewEnergy shall not telemarket to Maine customers on that list, as required in Chapter 305 section 4(I)(1).

VI. ADDITIONAL PROVISIONS

NewEnergy must comply with all applicable requirements and limitations in Chapter 305 not explicitly waived in this Order. NewEnergy must also comply with all requirements and limitations in other applicable Commission rules, including any applicable future changes in Maine laws and Commission rules, and in other parts of this Order.

VII. ORDERING PARAGRAPHS

Accordingly, we

1. amend the license of NewEnergy East, L.L.C. granted in Docket No. 1999-809 to authorize NewEnergy East, L.L.C. to operate as a competitive electricity provider to offer retail service to all customers in Maine, pursuant to Chapter 305 of the Commission's Rules;
2. order NewEnergy East, L.L.C. to comply with all Do-Not-Call List requirements contained in Part V(C) of this Order to the extent that it telemarkets to Maine consumers; and
3. order that this amended license is effective on the date of this Order and valid until revoked by the Commission pursuant to section 3(A)(4) of Chapter 305, or abandoned by the licensee pursuant to sections 2(C)(9) and 2(C)(11) of Chapter 305 of the Commission's Rules.

Dated at Augusta, Maine, this 17th day of March, 2000.

⁶Telephone Preference Service, Direct Marketing Association, Inc., P.O. Box 9014, Farmingdale, NY 11735-9014

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.